



MAR 24 2006
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United States Patent and Trademark Office
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TECHNOLOGY CENTER 3600

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In re Application of	:	DECISION ON THE PETITION
Mitchell R. Swartz	:	UNDER 37 CFR 1.181
Application No. 09/748,691	:	
Filed: December 26, 2000	:	
For: METHOD TO CONTROL REACTIONS	:	
INVOLVING ISOTOPIC FUEL WITHIN A	:	
MATERIAL USING ORTHOGONAL	:	
ELECTRIC-FIELDS	:	

This is a decision on applicant's petition on the propriety of the Abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office, on October 17, 2005.

The petition is **DENIED**.

RELEVANT HISTORY

On **April 30, 2003 and May 5, 2003**, applicant filed a Notice of Appeal appealing the final rejection made on February 3, 2003.

On **July 3, 2003**, applicant filed an Appeal Brief.

On **August 29, 2003**, a Notice of Non-Compliant Appeal Brief was mailed to the applicant.

On **September 23, 2003**, applicant filed a second Appeal Brief.

On **November 18, 2003**, a second Notice of Non-Compliant Appeal Brief was mailed to the applicant with the indication that applicant's response/attempt to correct the noted deficiencies was no longer considered to be inadvertent and the period for reply continued to run from the August 29, 2003 Notice of non-Compliance. Thus, applicant's statutory time period for adequately responding to the Notice of non-Compliance would expire on March 1, 2004.

On **November 26, 2003**, applicant filed a petition regarding the propriety of the Notice of non-Compliant Appeal Brief.

On **December 2, 2003**, applicant filed a third Appeal Brief. No extension of time period fees were paid by applicant.

On **January 22, 2004**, a third Notice of Non-Compliant Appeal Brief was mailed to the applicant with the indication that applicant's response/attempt to correct the noted deficiencies

MAR 24 2006

was no longer considered to be inadvertent and the period for reply continued to run from the August 29, 2003 Notice of non-Compliance. Thus, applicant's statutory time period for adequately responding to the Notice of non-Compliance would expire on March 1, 2004. TECHNOLOGY CENTER 3600

On **February 3, 2004**, applicant filed a second petition regarding the propriety of the Notice of non-Compliant Appeal Brief.

On **May 5, 2005**, the office **DENIED** applicant's petitions. The petition decision determined that applicant's Appeal Brief did not comply with item (8) of 37 CFR 1.192(c). Applicant being a *Pro Se* applicant was only required to provide items (1), (2), and (8) to comply with 37 CFR 1.192(c). See the petition decision for further details.

On **August 11, 2005**, the application was abandoned due to applicant's failure to file a proper Appeal Brief and the necessary extension of time fees.

DISCUSSION

Applicant petition dated October 17, 2005 states argues the following:

3. As discussed in the Swartz Declaration, Applicant received a "Notice Of Abandonment" [(Exhibit "A" attached hereinafter "Notice")] dated 8/11/2005. Said communication is a Notice which states that the application has been "Abandoned". There is a major error in said communication from the Office. As stated in the Swartz Declaration,

"This Applicant has NEVER abandoned this patent application. First, no communication to the Office from the Applicant has ever used the word "abandonment". Second, there have been three responses - including timely submitted Declarations- to which there has NEVER been a reply."

These arguments are not found to be persuasive. It is noted that applicant is not required to expressly state that he has Officially "abandoned" the application. In the instant case, applicant while filing three replies to the office action failed to take the required action (i.e., submit an Appeal Brief in compliance with 37 CFR 1.192(c)) within the statutory time period ending March 1, 2004. Applicant's replies having been non-compliant, with the statutory time period continuing to run, and no proper reply submitted to the office caused the case to go abandoned. The time period for reply had expired. For more information on abandonment see MPEP 711, particularly note MPEP 711.02.

4. Said Responses and Declarations were received at the Patent and Trademark Office BOTH on January 28, 2004 (Exhibit "C" attached) AND February 3, 2005 (Exhibits "B" and "D" attached). As stated in the Swartz Declaration,

"The datestamps of the Patent and Trademark Office (Exhibits "B", "C" and "D" attached) indicates that pleadings with Exhibits AND Declarations were received and docketed on January 28, 2003 through February 3, 2004."

6. Said Response included a Petition to the Commissioner supported by an Affidavit. All three pleadings were received as proven by the Office's datestamps (Exhibit "B" and "C" attached). As stated in the Swartz Declaration,

MAR 24 2006

TECHNOLOGY CENTER 3600

"Submitted as the Response (Exhibit "B") was a Petition to the Commissioner under 1.181, accompanied by a supporting Declaration. These additional important pleadings were received at the Patent and Trademark Office as proven by the Office's datestamps (Exhibits "B", "C" and "D").

Said datestamps of the Patent and Trademark Office [Exhibits "B", "C" and "D"] herald and prove receipt of Applicant's Responses to the Office's Action --- and this indelibly demonstrates that there was no abandonment. There may be disingenuity and impropriety at the Patent Office BUT there has been no abandonment by the Applicant (now Appellant)."

NOTA BENE: It is obvious the application was never abandoned because the Appellant has continued to submit pleadings, and entered a Petition to the Commissioner supported by a Declaration -- which the Examiner has removed from the file AFTER RECEIPT AS CONFIRMED BY THE STAMP OF THE HONORABLE POSTOFFICE.

As set forth more fully above, there was never any indication by the office that applicant's responses [Exhibits "B", "C" and "D"] were never received by the office. The fact remains that the responses [Exhibits "B", "C" and "D"] did not constitute a proper and bona fide reply to the Notice of non-Compliances. Applicant did not file a proper Appeal Brief in accordance with 37 CFR 1.192(c).

In response to applicant's assertion that the examiner has removed applicant's responses from the record this charge unfounded. The record is complete including exhibits "B", "C", and "D". **Nothing** has **ever been removed** from the file.

7. Said pleadings have simply been ignored by someone at the Office or removed from the file, who thereafter falsely checked off, "No reply has been received". In fact someone at the Office knew that there was a Petition to the Commissioner in the file because it was received and acted upon.

Someone at the Office knew there was a Response because the Response was received (Exhibits "B" "C" and "D"). Attention of the Commissioner and the court are directed to the obvious fact that once again, someone at the Office has spoliated submitted evidence to egregiously and systematically hurt the Applicant's application.

9. This Petition to reverse the Abandonment of the present invention is reasonable and should be granted because of any of the following reasons.

- A The date-stamps of the Office [Exhibits "B", "C" and "D" absolutely positively demonstrate receipt] **proves that there was no abandonment.**
- B Someone at the Office has on more than one occasion removed papers from Applicant's file(s), and this was reported to the Federal Court but has been continued in defiance by the Office. In the present case, someone has removed or ignored the Responses -- which were received [Exhibits "B", "C" and "D"]. This is spoliation of Office (federal) files.
- C **The U.S. Supreme Court has ruled that any pro se litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].**

Again as set forth more fully above, applicant's responses [exhibits "B", "C" and "D"] were considered by the office; however, these replies were non-responsive to the Notice of non-Compliant Appeal Brief. This was clearly set forth in the Notices of Non-Compliance mailed to applicant as well as the answer to applicant's petition dated November 26, 2003 and February 3, 2004. Note that merely submitting a petition does not preclude applicant from filing a proper response or stay the statutory time period for response.

With reference to the Notice of Abandonment mailed to applicant the "No reply has been received" box being checked is correct. Applicant has not submitted a **Proper** reply in response to the Notices of non-Compliance (i.e., a Proper Appeal Brief in accordance with 37 CFR 1.192(c)).

As above, no papers have ever been removed from applicant's application by the Office. These allegations are unfounded.

MAR 24 2006

TECHNOLOGY CENTER 3600

With regard to the Supreme Court ruling that *Pro Se* applicants be granted latitude, such was addressed in the Office decision on applicant's petition dated November 26, 2003 and February 3, 2004. For more details see the petition decision dated May 5, 2005.

10. For the above reasons, documented by the record, supported by the Law, and consistent with the date-stamps of the Office which indelibly prove that Applicant filed responses in a timely fashion with Declarations and Exhibits -- and which were received [confer Exhibits "B" "C" and "D"] --, therefore it is reasonably and respectfully requested that

A: The Commissioner should use supervisory authority to immediately activate and revive the above-entitled application based upon the Evidence that it was not so 'abandoned'.

B: Furthermore, the Commissioner in this prism the Office should cease and desist spoliating the previously-submitted Evidence or Mr. Kraus and the Commissioner MUST accept additional responsibility for said destruction of Evidence under the doctrine of *respondeat superior*.

C: The Applicant requests copies of the Docket immediately.

D: So that the appearance of impropriety in this matter by the Examiner and the Office may be minimized, the Commissioner should apply Sanctions to the Examiner and his Supervisor for again "abandoning" an application which was never abandoned -- and then recuse them.

Again as set forth more fully above the responses [exhibits "B", "C" and "D"] were not proper bona fide responses to the Notices of Non-Compliance. A proper response would have been an Appeal Brief in accordance with 37 CFR 1.192(c) and the payment of the necessary extension of time period fees.

At no point has any submission from applicant been removed from the record. These allegations are unfounded and are without merit.

With regard to the examiners and the supervisors of record there has been no indication of impropriety on their part or the Offices. These allegations are unfounded and without merit.

At applicants request he may order copies of the file docket at <http://ebiz1.uspto.gov/oems25p/index.html>.

DECISION

Since applicant has not properly responded to the Notice of Non-Compliant Appeal Brief by submitting a proper Appeal Brief and the period for responding has expired the case is Properly Abandoned. The petition is **DENIED**.

Any questions or comments with respect to this decision should be forwarded to Jack W. Keith in writing.



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jwk/snm: 2/28/06

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